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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.M. et al., Persons Coming
Under the Juvenile Court Law.

B288636

(Los Angeles County
Super. Ct. Nos. 17CCJP01472 A,
B, & D)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CHRISTINA M.,

Defendant and Appellant.

APPEAL from dispositional orders of the Superior Court of
Los Angeles County, Julie F. Blackshaw, Judge. Conditionally
affirmed and remanded with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine Miles, Acting Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

Christina M. (mother) appeals from dispositional orders of the juvenile court. Mother contends the Los Angeles County Department of Children and Family Services (Department) failed to perform its duties of inquiry and notice under the federal Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA). The Department concedes and we agree, that it did not conduct sufficient inquiry or provide sufficient notice under ICWA. Accordingly, we conditionally affirm and remand with directions.

II. BACKGROUND

A. *Section 300 Petition*

Mother has four children: 12-year old A.M.1, 11-year old A.M.2, 10-year old A.Z., and three-year old V.R.¹ On

¹ The appeal regarding A.Z. has been dismissed as moot as she was placed into her father's sole legal and physical custody, and the juvenile court terminated jurisdiction. (See *In re J.B.* (2009) 178 Cal.App.4th 751, 759 [finding ICWA did not apply to placement of an Indian child with a parent: "ICWA expressly focuses on the removal of Indian children from their *homes and*

October 31, 2017, the Department filed a petition pursuant to Welfare and Institutions Code² section 300, subdivision (b)(1), alleging that the children were at a substantial risk of harm because of mother's unwillingness or inability to care for them. The Department alleged mother would lock the children out of the home for extended periods of time without supervision. It also alleged the children had head lice, wore dirty clothing, and had matted hair; and the family home was dirty and had no electricity.

B. Detention Hearing

At a November 1, 2017, detention hearing, the juvenile court found a prima facie case to detain the children from mother. V.R.'s paternal grandmother appeared at the hearing and stated V.R. had Navajo ancestry. The juvenile court ordered the Department to meet with V.R.'s paternal grandmother to obtain more information and to file ICWA notices as appropriate.

C. Adjudication and Disposition Hearings

On November 22, 2017, the Department filed a disposition report, stating that V.R.'s paternal grandmother had asserted V.R. might have Navajo heritage, although she did not know

parents, and placement in foster or adoptive homes"]; accord, *In re M.R.* (2017) 7 Cal.App.5th 886, 904-905.) Thus, we need not discuss the ICWA inquiry and notice as to A.Z. for purposes of this appeal.

² Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

which tribe. The disposition report also described a Department investigator's telephone conversation with maternal grandfather.

On November 29, 2017, mother filed a Judicial Council form ICWA-020 (Parental Notification of Status) on which she indicated she had Apache ancestry through maternal grandmother. Mother wrote that V.R. had additional Indian ancestry through V.R.'s paternal great grandmother. At the disposition hearing conducted that date, the trial court found no reason to know that ICWA applied to the children, but ordered the Department to interview the maternal grandmother as to possible Indian ancestry for mother and the children.

On December 1, 2017, following a hearing, the juvenile court sustained the section 300 petition. The court continued the disposition until after the Department completed ICWA notice and inquiry. A.Z. was released into her father's care.

On December 12, 2017, a Department investigator interviewed mother and maternal grandmother at mother's home. Mother referred questions regarding her Indian heritage to maternal grandmother, who in turn stated that she understood from her own grandmother that she was Apache. She added that "all my relatives that said we were Apache are dead and no one else knows anything." A maternal aunt was present during the interview. Mother referred to the aunt as "Angel," but an earlier report stated her name was Angela M. The Department report makes no reference to any questions asked of or statements made by the maternal aunt. There is no indication in the record that the Department interviewed maternal grandfather about the children's Indian heritage.

On December 18, 2017, the Department sent Judicial Council forms ICWA-030 (Notice of Child Custody Proceeding for

Indian Child) to three Apache tribes in Arizona, the Yavapai-Apache Nation, the Bureau of Indian Affairs, and the Secretary of the Interior, for all four children. The ICWA-030 notices stated that the following information was “unknown:” maternal grandfather’s current address, former address, birthdate and place, and “[i]f deceased, date and place of death.” In addition, as to V.R., the ICWA-030 notice stated that everything about the paternal grandmother, including her name, was “unknown.” The Department did not send an ICWA-030 notice to the Navajo tribes, advising them of the pending proceedings regarding V.R.

On January 11, 2018, the juvenile court issued dispositional orders. A.M.1, A.M.2, and V.R. were declared dependents of the court and ordered removed from mother’s custody. The court placed the three children into foster care, and ordered the Department to provide reunification services to mother.

III. DISCUSSION

Pursuant to ICWA, “[i]n any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking . . . foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child’s tribe” of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); *In re Isaiah W.* (2016) 1 Cal.5th 1, 8.) “As the Supreme Court recently explained, notice to Indian tribes is central to effectuating ICWA’s purpose, enabling a tribe to determine whether the child involved in a dependency proceeding is an Indian child and, if so, whether to intervene in or exercise

jurisdiction over the matter. (*In re. Isaiah W.*, *supra*, 1 Cal.5th at pp. 8-9.)” (*In re. Michael V.* (2016) 3 Cal.App.5th 225, 232.)

A. *Duty to Inquire*

“The Department, as well as the court, has an affirmative obligation ‘to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable by interviewing the parents, Indian custodian, and extended family members’ (§ 224.3, subd. (c); see Cal. Rules of Court, rule 5.481(a)(4)(A)) if a person having an interest in the child ‘provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe’ (§ 224.3, subd. (b)(1); see Cal. Rules of Court, rule 5.481(a)(5)(A)).” (*In re. Michael V.*, *supra*, 3 Cal.App.5th at p. 235.) When a parent claims possible Indian ancestry, the Department must ask a parent’s siblings and other extended family members about such ancestry. (*Ibid.*; *In re Andrew S.* (2016) 2 Cal.App.5th 536, 545; see 25 U.S.C. § 1903(2) [“extended family member” includes the Indian child’s grandparents, aunts or uncles, siblings, brother-in-law or sister-in-law, niece or nephew, first or second cousins, and stepparents].)

Mother contends that the Department did not comply with its duty of inquiry by failing to interview maternal grandfather about possible Indian ancestry, even though it knew, based on mother and maternal grandmother’s statements, that the children might have Apache heritage. The Department concedes its inquiry was insufficient and agrees a remand is necessary so

that it may further interview the maternal grandfather. We agree.

Mother additionally argues that the Department failed to conduct sufficient inquiry as to V.R. because it was aware, based on paternal grandmother's statements, that V.R. might be a Navajo child, but it did not collect sufficient information about V.R.'s paternal family. The Department concedes, and we agree, that a remand is appropriate for further inquiry.

Finally, mother argues that the Department did not sufficiently interview other maternal relatives, including maternal aunt, about Indian ancestry. The Department disagrees and argues that it need not further interview maternal aunt because based on her being present during the Department's interview of mother and maternal grandmother, we can infer "that the maternal aunt would have proffered additional information if she had it." The record, however, indicates that the Department did not affirmatively ask the maternal aunt any questions. "It was not the [maternal aunt's] obligation to speak up; it was the Department's obligation to inquire, an affirmative and continuing duty imposed by both ICWA and California law." (*In re. Michael V.*, *supra*, 3 Cal.App.5th at p. 236.) Thus, we will remand for further inquiry.

B. *Sufficient Notice*

The Department also has an obligation to provide sufficient notice to Indian tribes. Pursuant to former section 224.2, subdivision (a)(3),³ “[i]f the court, a social worker, or probation officer knows or has reason to know that an Indian child is involved . . . [n]otice shall be sent to all tribes of which the child may be a member or eligible for membership.” Notice shall include: “[a]ll names known of the Indian child’s biological parents, grandparents, and great-grandparents, or Indian custodians, including maiden, married and former names or aliases, as well as their current and former addresses, birthdates, places of birth and death, tribal enrollment numbers, and any other identifying information, if known.” (Former § 224.2, subd. (a)(5)(C); § 224.3, subd. (a)(5)(C).) ICWA inquiry and notice requirements are strictly construed. (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1397; *In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

Mother contends that the Department failed to provide sufficient notice to the Apache tribes by failing to list any information, besides name, for maternal grandfather. A Department investigator had prior telephonic contact with maternal grandfather. Thus, the Department’s representation in the ICWA-030 notices that the date and place of birth and current and prior addresses of paternal grandfather were

³ Former section 224.2 governing ICWA notice was repealed by statute in 2018 and re-codified at section 224.3. (Stats. 2018, ch. 833, §§ 4, 7.) These changes do not affect the issues in this appeal.

“unknown” did not comply with ICWA’s notice requirements. The Department concedes this point.

Mother next contends that the Department’s failure to provide notice to the Navajo tribes about the proceedings regarding V.R. violated ICWA and requires remand. Because the Department had reason to know that V.R. was a Navajo child, it was required to provide notice to the Navajo tribes. The Department agrees.

Finally, mother argues that the ICWA-030 notice for V.R. was insufficient because it listed V.R.’s paternal grandmother as “unknown.” V.R.’s paternal grandmother had appeared at a court hearing and was later interviewed by the Department. Thus, she was known to the Department, as the Department concedes.

Accordingly, we will remand for the juvenile court to order the Department to: further interview maternal grandfather, maternal grandmother, and other maternal extended family members (including maternal aunt Angela) regarding the children’s Indian heritage; further interview V.R.’s paternal grandmother regarding V.R.’s possible Navajo and other American Indian heritage; send notice pursuant to ICWA to the Navajo and any other named tribes regarding V.R.; and to send new notices on behalf of A.M.1, A.M.2, and V.R. if there is new information. This is a limited remand. “If the only error requiring reversal . . . is defective ICWA notice and it is ultimately determined on remand that the child is not an Indian child, the matter ordinarily should end at that point, allowing the child to achieve stability and permanency in the least protracted fashion the law permits.” (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168.) Thus, if an Indian tribe does not

assert a child is Indian after proper ICWA inquiry and notice, the dispositional order regarding that child should be reinstated.

IV. DISPOSITION

The dispositional orders are conditionally affirmed. On remand, the juvenile court is directed to order the Department to comply with the notice and inquiry requirements under ICWA and the relevant law, consistent with this opinion. If, after proper inquiry and notice, an Indian tribe asserts that A.M.1, A.M.2, or V.R. is an Indian child, the juvenile court shall proceed in conformity with the provisions of ICWA and the relevant law. If no Indian tribe asserts a child is Indian after proper inquiry and notice, the dispositional order is to be reinstated for that child.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.